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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/066,005

01/31/2002

Neil D. Scancarella

Rev 01-3

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12/19/2007

JULIE BLACKBURN

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NEW YORK, NY 10017

EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1617

MAIL DATE

DELIVERY MODE

12/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/066,005

Applicant(s)

SCANCARELLA ET AL.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17, 38--41, 56-65 is/are pending in the application.
- 4a) Of the above claim(s) 39 and 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17, 38, 41, 56-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 31, 2007 has been entered.

Election/Restrictions

According to the response to the species election filed on June 22, 2004, applicants have elected polymeric alpha olefin as the specific type of wetting agent to be examined. Since the polymeric alpha olefins in the original disclosure are liquid hydrocarbons according to the original disclosure, specification p. 21, lines 6 – 13, the claimed subject matter in claims 39 and 40 are not readable on the elected species and would be withdrawn from consideration at this time.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17, 38, 56, 57, 60-65 are rejected under 35 U.S.C. 102(b) as being anticipated by Finkenaur et al. (US 4935228) as evidenced by Amoco Technical Data.

Finkenaaur discloses a lip-gloss composition comprising mineral oil gel and polybutene. Polybutene is said to make the lip gloss water proof and permits it to retain its coloring and other beneficial effect on the wearer's lips for a substantially longer period. See col. 3, lines 17-33. The reference teaches polyiso- and normal butenes supplied by AMOCO from INDOPOL, H-100, H-300 AND 1500. See col. 4, lines 24-33. Polybutene Indopol H-100 has number average molecular weight 940. See Amoco technical data.

In claim 17, the phrase "for use in combination with an anhydrous pigmented transfer resistant, film-forming, cross-linked resinous silicone composition" is an intended future use of the claimed invention comprising wetting agent. The term "overcoat" in line 13 is also an intended use, thus no patentable weight is given to these preambles. The non reactive property and affinity of the wetting agent as presently claimed is inherent in the prior art composition. The properties of the transfer resistant composition as recited in claims 60-65 do not affect and thus fail to limit the claimed lip cosmetic comprising the wetting agent.

Claims 17, 38, 58, 59-65 are rejected under 35 U.S.C. 102(b) as being anticipated by Manufacturing Chemist as evidenced by Exxon Mobile Chemical Technical Data.

Manufacturing Chemist teaches that poly-alpha-olefins (notably polydecene) are popular as oil-free emollients" which are used as "pigment wetting and dispersing aids". See p. 2, Base Formulation Improvements, 3rd par. These emollients are said to be "colourless, odourless, non-toxic and non-greasy and blend well with most cosmetic oils". See Id. The reference teaches that the products under PureSyn trademark from Mobil

Chemicals in different viscosity grades. According to Exxon Mobile Chemical, PureSyn polyalphaolefins are hydrogenated hydrocarbon fluid. The reference teaches Pure Syn150 and 300 having a number average molecular weight of 3,500 and 5,100, respectively.

In claim 17, "for use in combination with an anhydrous pigmented transfer resistant, film-forming, cross-linked resinous silicone composition" is an intended future use of the claimed invention comprising wetting agent. The term "overcoat" in line 13 is also an intended use, thus no patentable weight is given to these preambles

The physical property of the polydecene is inseparable from the compound, thus recited non reactive property and affinity of the wetting agent as presently claimed is inherent in the prior art polydecene. The fluidity property of the composition is also inherent to the combination of the polydecene with cosmetic oils which is disclosed in the reference. The properties of the transfer resistant composition as recited in claims 60-65 do not change the claimed wetting agent and thus fails to further limit the claimed invention.

Response to Arguments

Applicant's arguments with respect to claims 17, 38-41, 56-65 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605.

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The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gina C. Yu
Patent Examiner